

## DELTA PROTECTION COMMISSION

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July 12, 1996

To: Delta Protection Commission

From: Margit Aramburu, Executive Director

Subject: Public Hearing and Possible Commission Action to Support AB 360 (Hannigan)

The Chairman sent a letter of support for the original version of AB 360, which allowed "project" letters in the Delta Primary Zone to be eligible to participate in the levee subventions program.

The current version of the bill has been broadened to:

- \* Extend the existing program until January 1, 2030 (from January 1, 1999).

- \* Require Department of Water Resources (DWR) and Department of Fish and Game to develop delta levees habitat management guidelines to promote net long-term habitat improvement.

- \* Authorize DWR to develop guidelines for the beneficial use of dredged material.

- \* Require maintenance and improvement criteria to include vegetation management guidelines.

- \* Authorize DWR to prepare a delta emergency response plan for levee failures.

- \* Authorize DWR to cooperate with the Corps to develop and implement delta levee rehabilitation, improvement, and realignment and enhance the environment.

- \* The bill is valid only if SB 900 is approved by the voters in November, 1996.

# AB 360 Delta levee maintenance: reimbursement.

**BILL NUMBER: AB 360 AMENDED 07/08/96**

AMENDED IN SENATE JULY 8, 1996

AMENDED IN SENATE MAY 20, 1996

AMENDED IN SENATE APRIL 10, 1996

**INTRODUCED BY Assembly Member Hannigan**

**FEBRUARY 10, 1995**

An act to ~~add Part 10 (commencing with Section 12997) to Division 6 of~~ amend Sections 12300, 12301, 12303, 12310, 12311, 12312, 12313, 12314, 12316, 12980, 12981, 12982, 12984, 12986, 12987, 12987.5, 12988, and 12989 of, to add Sections 12317, 12318, 12994, and 12995 to, and to repeal Sections 12308 and 12986 of, the Water Code, relating to water.

## LEGISLATIVE COUNSEL'S DIGEST

AB 360, as amended, Hannigan. Delta flood protection: delta levee maintenance + ~~reimbursement~~.

(1) Existing law creates, until January 1, 1999, the Delta Flood Protection Fund to provide funds for delta levee maintenance subventions. Existing law provides for special delta flood protection projects at certain locations in the delta for specified purposes, as prescribed, and imposes related environmental mitigation and protection requirements. Existing law defines "project" as a flood control improvement or interests in land acquired for flood control improvement.

This bill would revise those provisions to, among other things, extend the existence of the fund until January 1, 2030, authorize the use of fund money for projects at any other location in the delta, extend the application of special delta flood project provisions to specified project levees, as defined, and include mitigation and habitat improvement among the purposes of special delta flood protection projects.

The bill would require the Department of Water Resources, in coordination with the Department of Fish and Game, to develop delta levees habitat management guidelines, as prescribed, to promote net long-term habitat improvement.

The bill would authorize the Department of Water Resources to establish a team of federal, state, and local agencies to develop guidelines for the beneficial reuse of dredged material, as prescribed.

(2) Existing law governing delta levee maintenance requires the Department of Water Resources to develop and submit to the Reclamation Board, or adoption by the board, criteria for the maintenance and improvement of levees that are not project facilities under the State Water Resources Law of 1945, known as nonproject levees, as prescribed. Existing law provides for the reimbursement of eligible local agencies for costs incurred in any year for the maintenance or improvement of nonproject levees. Local agencies that maintain nonproject levees, to be eligible for reimbursement, are required to submit to the board plans for the maintenance and improvement of the levees, as prescribed.

*This bill would require those maintenance and improvement criteria to include specified vegetation management guidelines. The bill would revise those reimbursement provisions to, among other things, provide for the reimbursement of eligible local agencies for costs incurred for the maintenance or improvement of project levees, defined as federal flood control levees that are project facilities under the State Water Resources Law of 1945 and other specified existing law, if not less than a majority of the acreage within the jurisdiction of the local agency that maintains the levee is within the primary zone of the delta, as defined. The bill would also require local agencies that maintain project levees, and seek reimbursement, to submit levee maintenance and improvement plans, as prescribed, and revise plan requirements with regard to subsidence, easements, and net long-term habitat improvement.*

*The bill would authorize the Department of Water Resources to use maintenance and improvement funds, as specified, in an emergency, as defined, prepare a delta emergency response plan for levee failures, as prescribed, and establish a multiagency emergency response team to advise on methods to ensure that levee emergencies will be resolved as quickly and safely as possible.*

*The bill would authorize the Department of Water Resources and the board to cooperate with the United States Army Corps of Engineers to develop and implement delta levee rehabilitation, improvement, and realignment, and enhance the environment.*

~~Existing law provides for the reimbursement of eligible local agencies for costs incurred in any year for the maintenance or improvement of levees that are not project facilities under the State Water Resources Law of 1945.~~

~~This bill would require the Department of Water Resources, in consultation with the Department of Fish and Game, to develop and submit to the Reclamation Board, for adoption by the board, criteria for levee maintenance activities, including habitat restoration work that could be performed by the local agencies on project levees in connection with the levee maintenance activities of the local agencies. The bill would define "project levee" to mean a levee in the delta that is a project facility under the State Water Resources Law of 1945, if not less than a majority of the acreage within the jurisdiction of the local agency that maintains the levee is within the primary zone of the delta, as defined. The bill would declare that it is the intention of the Legislature to reimburse an eligible local agency in accordance with the bill's provisions for costs incurred in any year for maintenance activities that include benefits to the Sacramento-San Joaquin Delta and the state by providing habitat restoration in accordance with the criteria adopted by the board. The bill would make local agencies maintaining project levees eligible for reimbursement upon submission to, and approval by, the board of plans for levee maintenance activities that conform to the adopted criteria. The bill would prescribe related matters.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

~~SECTION 1. Part 10 (commencing with Section~~

*SECTION 1. Section 12300 of the Water Code is amended to read:*

12300. (a) The Delta Flood Protection Fund is hereby created in the State Treasury. There shall be deposited in the fund all moneys appropriated to the fund and all income derived from the investment of moneys that are in the fund.

(b) It is the intent of the Legislature to appropriate, in accordance with Section 12938, twelve million dollars (\$12,000,000) each year through fiscal year 1998-99 to the Delta Flood Protection Fund from moneys deposited in the California Water Fund pursuant to subdivision (b) of Section 6217 of the Public Resources Code. It is further the intent of the Legislature to appropriate annually moneys in the

Delta Flood Protection Fund to the department for expenditure and allocation, without regard to fiscal years, in the following amounts and for the following purposes:

- (1) Six million dollars (\$6,000,000) annually for local assistance under the delta levee maintenance subventions program pursuant to Part 9 (commencing with Section 12980), and for the administration thereof.
- (2) Six million dollars (\$6,000,000) annually for special delta flood protection projects under Chapter 2 (commencing with Section 12310) and ~~for~~ subsidence studies and monitoring, *and the administration thereof*. These funds shall only be allocated for projects on Bethel, Bradford, Holland, Hotchkiss, Jersey, Sherman, Twitchell, and Webb Islands, *and at other locations* in the delta and for the Towns of Thornton and Walnut Grove.
- (c) Any moneys unexpended at the end of a fiscal year shall revert to the Delta Flood Protection Fund and shall be available for appropriation by the Legislature for the purposes specified in subdivision (b).

*SEC. 2. Section 12301 of the Water Code is amended to read:*

12301. The Delta Flood Protection Fund is hereby abolished on January 1, ~~1999~~ 2030, and all unencumbered moneys in the fund are transferred to the General Fund.

*SEC. 3. Section 12303 of the Water Code is amended to read:*

12303. (a) It is the intent of the Legislature that, subject to subdivision (b) of Section 12929.12, if twelve million dollars (\$12,000,000) or any lesser amount is transferred pursuant to paragraph (3) of subdivision (b) of Section 12937 to the California Water Fund from the California Water Resources Development Bond Fund in each of the fiscal years 1990-91 to 1997-98, inclusive, and if six million dollars (\$6,000,000) or any lesser amount is so transferred in the 1998-99 fiscal year, that amount shall be appropriated to the Delta Flood Protection Fund for the purposes specified in subdivision (b) of Section 12300, in lieu of the funds deposited in the California Water Fund pursuant to subdivision (b) of Section 6217 of the Public Resources Code. However, that the director, in consultation with the Department of Finance, may accelerate payments to the California Water Fund for reappropriation to the Delta Flood Protection Fund if the director deems it appropriate to do so.

(b) The obligation of the State Water Resources Development System to reimburse the California Water Fund, pursuant to paragraph (3) of subdivision (b) of Section 12937, shall decrease by amounts equal to the amounts which are transferred from the California Water Resources Development Bond Fund to the California Water Fund and appropriated to the Delta Flood Protection Fund pursuant to subdivision (a).

(c) For any fiscal year, the Director of Finance, in consultation with the Director of Water Resources, may recommend in the Budget Act a source of funding for the Delta Flood Protection Fund which is different from that set forth in subdivision (a). If the Legislature approves the alternative source of funding, the portion of the State Water Resources Development System obligation specified in subdivision (b) which remains outstanding because of the selection of the alternative funding source shall be discharged pursuant to subdivision (b) of Section 11913.

(d) *It is the intent of the Legislature, upon the creation of the Delta Levee Rehabilitation Subaccount pursuant to Section 78540, as proposed to be added by S.B. 900 of the 1995-96 Regular Session, that Section 12300 and subdivisions (a), (b), and (c) shall not apply to the Delta Levee Rehabilitation*

*Subaccount and that the funds of the subaccount shall be available to fund equally both of the following:*

- (1) The delta levee maintenance subventions program pursuant to Part 9 (commencing with Section 12989), associated mitigation and habitat improvement programs, and the administration thereof.*
- (2) The special delta flood protection projects pursuant to Chapter 2 (commencing with Section 12310), associated mitigation and habitat improvement programs, and the administration thereof.*

*SEC. 4. Section 12308 of the Water Code is repealed.*

~~12308. The Resources Agency shall report to the Legislature not later than January 15 of each year all of the following information for each plan approved pursuant to this part:~~

~~(a) The name of each local agency submitting a plan, the island or tract involved, and a map of the island or tract indicating the work and the mitigation sites.~~

~~(b) The amount of money allocated to the plan, and the amount of money spent on project construction and on project mitigation.~~

~~(c) The number of acres of riparian, wildlife, and fisheries habitat and the number of lineal feet of shaded aquatic areas disturbed by projects funded under this part.~~

~~(d) The number and quality of acres of replacement habitat provided as mitigation.~~

~~(e) An annual assessment as to whether the cumulative impact of projects funded pursuant to this part has resulted in no net long term loss of riparian, wildlife, or fisheries habitat. If the Resources Agency determines that a net long term loss has occurred, it shall include in its assessment the necessary steps to correct those deficiencies.~~

*SEC. 5. Section 12310 of the Water Code is amended to read:*

12310. As used in this chapter, the following terms have the following meanings:

(a) "Local public agency" means a reclamation district or levee district or other public agency responsible for the maintenance of a nonproject levee as defined in subdivision (d) of Section 12980 *or a project levee as defined in subdivision (e) of Section 12980.*

(b) "Project" means the flood control improvement *and any mitigation or habitat improvement* constructed, or interests in land acquired, *for those purposes* pursuant to this ~~chapter part~~.

(c) "Department" means the Department of Water Resources.

(d) "Delta" means the Sacramento-San Joaquin Delta as described in Section 12220.

(e) "Delta levees habitat management guidelines" means guidelines prepared pursuant to Section 12317.

(f) "Net long-term habitat improvement" means enhancement of aquatic or terrestrial habitat as described by subdivision (a) of Section 12317 and as further defined in the amendments to the memorandum of understanding required by subdivision (b) of Section 12317

(g) "CALFED Bay Delta Program" or "CALFED program" means the program established in May 1995 as a joint effort among state and federal agencies with management and regulatory responsibilities in the San Francisco Bay and Sacramento-San Joaquin River Delta to develop long-term solutions to resource management problems involving the bay-delta.

SEC. 6. Section 12311 of the Water Code is amended to read:

12311. (a) The department shall develop and implement a program of flood control projects on Bethel, Bradford, Holland, Hotchkiss, Jersey, Sherman, Twitchell, and Webb Islands, and at other locations in the delta and for the Towns of Thornton and Walnut Grove. This program shall have, as its primary purpose, the protection of discrete and identifiable public benefits, including the protection of public highways and roads, utility lines and conduits, and other public facilities, and the protection of urbanized areas, water quality, recreation, navigation, and aquatic and terrestrial habitats, and other public benefits. The program shall also include the net long-term improvement of aquatic and terrestrial habitats.

(b) Notwithstanding subdivision (a), the department shall develop and recommend a plan of action, including alternatives, for flood control for the Towns of Thornton and Walnut Grove and shall submit the plan to the Legislature by January 1, 1989. The department shall not allocate any funds for implementation of the plan of action for flood control for the Towns of Thornton and Walnut Grove until a plan is approved by the Legislature.

SEC. 7. Section 12312 of the Water Code is amended to read:

12312. The department may expend any moneys available to it pursuant to paragraph (2) of subdivision (b) of Section 12300 or any moneys available from other sources of funding appropriated by the Legislature for the purposes of this ~~chapter~~ part. In addition, the department shall seek a sharing of costs with the beneficiaries or owners or operators of the public facilities benefited by the flood protection projects. The department shall also seek cost sharing with, or financial assistance from, federal agencies which have programs applicable to, or which have an interest in, the flood protection projects.

SEC. 8. Section 12313 of the Water Code is amended to read:

12313. (a) The department shall develop a ~~list of areas where~~ plan for flood control work ~~is needed~~, mitigation, or habitat improvement to protect public facilities or provide public benefits. In developing the ~~list~~ plan, the department shall consult with all appropriate federal, state, and local agencies. The plan shall refer to and incorporate, as appropriate, the delta levees habitat management guidelines developed pursuant to Section 12317. The ~~list~~ plan shall establish a priority for the areas that need flood control and habitat improvement, based upon ~~both~~ all of the following:

- (1) The importance or degree of public benefit needing protection.
- (2) The need for flood protective work.
- (3) The need for protection and improvement for aquatic and terrestrial habitats associated with delta levees.
- (4) Benefits to public recreation.

(b) The ~~list plan~~ shall be submitted to the California Water Commission for approval, and shall be updated by the department, with the approval of the California Water Commission, as the department ~~may deem~~ *determines to be appropriate.*

*SEC. 9. Section 12314 of the Water Code is amended to read:*

12314. (a) Guided by the approved ~~priority list plan~~ developed pursuant to Section 12313, the department shall develop project plans to accomplish the needed flood protection work, *mitigation, or habitat improvements*, in cooperation with the local public agency, the public beneficiary, and the Department of Fish and Game.

~~The~~

(b) *The project plans* shall be subject to the approval of the appropriate local public agency or agencies and subject to any cost-sharing agreement the department may have entered into under Section 12312. Project plans may include, or be a combination of, the improvement, rehabilitation, or modification of existing levees, *mitigation, or aquatic and terrestrial habitat improvement*, and the *acquisition or conveyance of interests in land to limit or to modify land management practices which have a negative impact on flood control facilities.*

~~Project~~

(c) *Project plans* shall include provision for the protection of ~~fish and wildlife~~ *aquatic and terrestrial habitat* determined to be necessary by the Department of Fish and Game and not injurious to the integrity of flood control works. The Department of Fish and Game shall consider the value of the riparian and ~~fisheries~~ *aquatic habitat* and the need to provide greater flood protection in preparing its requirements, and shall not approve any plan which calls for the use of channel islands or berms with significant riparian communities as borrow sites for levee repair materials, unless fully mitigated, or any plans ~~which that~~ *which that* will result in a net long-term loss of riparian, ~~fisheries, or wildlife~~ *aquatic, or terrestrial habitat.*

(d) *After the memorandum of understanding required pursuant to Section 12307 is amended as provided by Section 12317 to include methods for determining net long-term habitat improvement, the Department of Fish and Game shall require plans to be consistent with a net long-term improvement of aquatic and terrestrial habitat in the delta. The memorandum of understanding in effect prior to the amendments required by Section 12317 shall remain in effect with regard to levee projects and plans until the memorandum of understanding is amended.*

*SEC. 10. Section 12316 of the Water Code is amended to read:*

12316. In addition to any obligations assumed under an agreement with the department and to the extent consistent with that agreement, the local public agency shall do all of the following:

(a) Provide construction access to lands or rights-of-way which it owns or maintains for flood control purposes or for purposes with which the project's required uses are compatible and necessary to complete the project.

(b) Maintain the completed project *pursuant to maintenance criteria developed and adopted in accordance with Section 12984.*

(c) Apply for federal disaster assistance, whenever eligible, under Public Law 93-288.

(d) Hold and save the department, any other agency or department of the state, and their employees free from any and all liability for damages, except that caused by gross negligence, that may arise out of the construction, operation, or maintenance of the project.

(e) Acquire easements ~~up to 400 feet in width from the crown along levees for the control and reversal of subsidence~~ in areas where the department determines that such an easement is desirable to maintain structural stability of the levee. The easement ~~shall~~ may (1) restrict the use of the land to open-space uses ~~with minimum tillage of the soil, including, without limitation,~~ nontillable crops ~~such as pasture,~~ the propagation of wildlife habitat, and other compatible uses, (2) provide full access to the local agency for levee maintenance and improvement purposes, and (3) allow the owner to retain reasonable rights of ingress and egress as well as reasonable rights of access to the waterways for water supply and drainage. The local public agency costs of acquisition of the easements shall be reimbursable by the department from moneys appropriated pursuant to paragraph (2) of subdivision (b) of Section 12300 *or any sources of funding appropriated by the Legislature for purposes of this part.*

(f) Comply with ~~all~~ *habitat mitigation and improvement requirements required pursuant to this chapter part.*

(g) *Use subsidence control alternatives, where appropriate, to reduce long-term maintenance and improvement costs.*

SEC. 11. *Section 12317 is added to the Water Code, to read:*

12317. (a) *The Legislature finds and declares all of the following:*

(1) *Delta levees habitat management guidelines are important to promote efficient and effective planning of delta levee maintenance and improvements because of the increasing need to comprehensively address impacts of levee work on aquatic and terrestrial species. Comprehensive guidelines for the conservation, mitigation, and improvement of aquatic and terrestrial habitats associated with delta levee work could provide greater environmental benefits than a site-by-site, species-by-species approach. The guidelines should include the objective to minimize conflicts between ongoing levee maintenance needs and long-term habitat protection and enhancement.*

(2) *The CALFED Bay-Delta program recognizes the need for a delta ecosystem restoration strategy and has identified aquatic and terrestrial habitat restoration associated with levee protection practices as core actions to be included in all solution alternatives.*

(3) *Delta levees habitat management guidelines shall be consistent with any restoration plans or actions developed by the CALFED program and are intended to facilitate CALFED program planning as well as levee work undertaken pursuant to this part and Part 9 (commencing with Section 12980).*

(4) *The guidelines are not intended to preclude or limit any other agreements, regulations, or programs developed for habitat and species protection in the delta.*

(b) *As part of the administration of the special flood control projects program, the department, in*



*coordination with the Department of Fish and Game, shall develop delta levees habitat management guidelines in consultation with all appropriate federal, state, and local agencies. The guidelines shall provide methods and criteria to achieve net long-term aquatic and terrestrial habitat improvement. The guidelines shall include, but not be limited to, the following features:*

*(1) Net long-term aquatic habitat improvement actions that do not depend on flow-related solutions. Habitat banking is an acceptable means of achieving habitat improvement and may consist of improvements to areas such as wetlands and shaded riparian aquatic habitat.*

*(2) Criteria for selecting net long-term aquatic and terrestrial habitat improvement projects. Such criteria shall include, but not be limited to:*

*(A) The quality of habitat to be created, improved, or preserved, such as the creation of an important habitat corridor.*

*(B) The potential to use state-owned land, purchased land, or conservation easements at the proposed site.*

*(C) The feasibility of using the created habitat to offset current and future obligations of special projects or subvention projects.*

*(D) The aquatic or terrestrial habitat improvement projects shall not be injurious to the integrity of flood control works.*

*(3) Emphasis on developing projects that meet the habitat needs of multiple aquatic and terrestrial species with a special focus on sensitive species in the delta.*

*(4) Consideration of recommendations provided by the Delta Protection Commission in its resource management plan prepared and adopted pursuant to Chapter 5 (commencing with Section 29760) of Division 19.5 of the Public Resources Code, and of the guidelines set forth in the Office of Emergency Services and Federal Emergency Management Agency document "Vegetation Management Guidelines for Local, Non-Project Delta Levees," dated April, 1994.*

*(5) Consistency with the CALFED Bay-Delta Program actions that address levee maintenance and levee habitat protection, with category III actions, and with any other delta habitat improvement actions. As used in this paragraph, "category III actions" means the measures referenced in Attachment C of the "Principles for Agreement on Bay-Delta Standards between the State of California and the Federal Government," dated December 15, 1994.*

*(b) The Resources Agency, the department, the Department of Fish and Game, and the Reclamation Board shall amend the memorandum of understanding required by Section 12307 to include methods and criteria for defining net long-term aquatic and terrestrial habitat improvement and to consider other elements of the delta levees habitat management guidelines when implementing the programs subject to Chapter 1.5 (commencing with Section 12306). The memorandum of understanding in effect prior to the amendments required by this section shall continue to apply to levee projects and plans until the memorandum of understanding is amended.*

*(c) Funding for development of the delta levees habitat management guidelines will be through the special flood control projects program and funding for the aquatic and terrestrial habitat improvement*

*projects will be through the special flood control projects of this part and the delta levees subvention projects of Part 9 (commencing with Section 12980).*

*(d) The delta levees habitat management guidelines are exempt from the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.*

*SEC. 12. Section 12318 is added to the Water Code, to read:*

*12318. (a) The department may establish a multiagency team of state, federal, and local agencies to develop guidelines for the beneficial reuse of dredged material, consistent with actions identified by the CALFED Bay-Delta Program as core actions, which are those actions included in all bay-delta solutions. The guidelines shall address all of the following needs:*

*(1) Long-term availability of cost-effective and appropriate dredged material for delta levee maintenance and improvements.*

*(2) Beneficial reuse of dredged or suitable alternative materials.*

*(3) Coordination of dredging projects to augment on-island stockpiles.*

*(4) Development of a comprehensive monitoring program of the effects of the reuse of dredged material.*

*(5) Streamlining of permits necessary to allow for the reuse of dredged material.*

*(6) A study of the applicability of constructing channel sediment traps and dredged material rehandling facilities adjacent to frequently dredged channel sections.*

*(b) Any on-island stockpiles of dredged materials that are established in accordance with guidelines developed by the multiagency team shall be exempt from the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code) and any local ordinances relating to surface mines.*

*SEC. 13. Section 12980 of the Water Code is amended to read:*

*12980. As used in this part:*

*(a) "Board" means the Reclamation Board.*

*(b) "Delta" means the Sacramento-San Joaquin Delta as described in Section 12220.*

*(c) "Local agency" means any city, county, district, or other political subdivision of the state which is authorized to maintain levees.*

*(d) "Nonproject levee" means a local flood control levee in the delta ~~which~~ that is not a project facility under the State Water Resources Law of 1945, as shown on page 38 of the Department of Water Resources "Sacramento-San Joaquin Delta Atlas," dated 1993.*

*(e) "Project levee" means a federal flood control levee, as shown on page 40 of the Department of Water Resources "Sacramento-San Joaquin Delta Atlas," dated 1993, that is a project facility under the*

*State Water Resources Law of 1945 (Chapter 1 (commencing with Section 12570) and Chapter 2 (commencing with Section 12639) of Part 6), if not less than a majority of the acreage within the jurisdiction of the local agency that maintains the levee is within the primary zone of the delta, as defined in Section 29728 of the Public Resources Code .*

*SEC. 14. Section 12981 of the Water Code is amended to read:*

12981. (a) The Legislature ~~hereby~~ finds and declares that the delta is endowed with many invaluable and unique resources and that these resources are of major statewide significance. ~~The~~

(b) The Legislature further finds and declares that the delta's uniqueness is particularly characterized by its hundreds of miles of meandering waterways and the many islands adjacent thereto; that, in order to preserve the delta's invaluable resources, which include highly productive agriculture, recreational assets, fisheries, and wildlife environment, the physical characteristics of the delta should be preserved essentially in their present form; and that the key to preserving the delta's physical characteristics is the system of levees defining the waterways and producing the adjacent islands. However, the Legislature recognizes that it may not be economically justifiable to maintain all delta islands.

(c) The Legislature further finds and declares that funds necessary to maintain and improve the delta's levees to protect the delta's physical characteristics should not be used to fund levee work that would promote increased nonagricultural development in the delta inconsistent with the purpose of preserving the delta's invaluable resources.

*SEC. 15. Section 12982 of the Water Code is amended to read:*

12982. (a) The Legislature further finds and declares that while most of the delta's levees are privately owned and maintained they are being subjected to varied multiple uses and serve to benefit many varied segments and interests of the public at large, and that as a result of the varied multiple uses of such levees, added maintenance costs are being borne by adjacent landowners.

(b) The Legislature further finds and declares that maintenance of the levees is a benefit to numerous species of waterfowl and other wildlife by preserving delta habitat. If delta islands flood and are not reclaimed, the existing island habitat would be replaced by mostly deep, open water habitat that may be less beneficial to aquatic and terrestrial species. The net result of flooded islands would be the loss of significant habitat for land-based species in exchange for marginal habitat for water-based species.

*SEC. 16. Section 12984 of the Water Code is amended to read:*

12984. The department shall develop and submit to the board, for adoption by the board, criteria for the maintenance and improvement of nonproject levees. The criteria shall vary as required to meet specific conditions and shall be multipurpose in nature, and include environmental considerations, when feasible. The criteria shall embody and implement ~~the~~ both of the following:

(a) The short-term mitigation plan set forth in the "Flood Hazard Mitigation Plan for the Sacramento-San Joaquin Delta," prepared by the department for the Office of Emergency Services, dated September 15, 1983, ~~and or as it may be subsequently amended.~~

(b) The "Vegetation Management Guidelines for Local Nonproject Delta Levees" dated April, 1994, or any successor guidelines.

*SEC. 17. Section 12986 of the Water Code, as amended by Section 5 of Chapter 28 of the Statutes of 1988, is amended to read:*

12986. (a) It is the intention of the Legislature to reimburse an eligible local agency pursuant to this part for costs incurred in any year for the maintenance or improvement of *project or nonproject levees* as follows:

(1) No costs incurred shall be reimbursed if the entire cost incurred per mile of *project or nonproject levee* is one thousand dollars (\$1,000) or less.

(2) ~~seventy-five~~ *Not more than 75 percent* of any costs incurred in excess of one thousand dollars (\$1,000) per mile of *project or nonproject levee* shall be reimbursed.

(3) (A) *As part of the project plans approved by the board, the department shall require the local agency or an independent financial consultant to provide information regarding the agency's ability to pay for the cost of levee maintenance or improvement. Based on that information, the department may require the local agency or an independent financial consultant to prepare a comprehensive study on the agency's ability to pay.*

(B) *The information or comprehensive study of the agency's ability to pay shall be the basis for determining the maximum allowable reimbursement eligible under this part. Nothing in this paragraph shall be interpreted to increase the maximum reimbursement allowed under paragraph (2).*

(4) *Reimbursements made to the local agency in excess of the maximum allowable reimbursement shall be returned to the department.*

(5) *The department may recover, retroactively, excess reimbursements paid to the local agency from any time after January 1, 1997, based on an updated study of the agency's ability to pay.*

(6) *All final costs allocated or reimbursed under a plan shall be approved by the reclamation board for project and nonproject levee work.*

(7) *Costs incurred pursuant to this part that are eligible for reimbursement include construction costs and associated engineering services, financial or economic analyses, and environmental costs.*

~~(b) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.~~

*SEC. 18. Section 12986 of the Water Code, as added by Section 6 of Chapter 28 of the Statutes of 1988, is repealed.*

~~12986. (a) It is the intention of the Legislature to reimburse from the General Fund an eligible local agency pursuant to this part for costs incurred in any year for the maintenance or improvement of nonproject levees as follows:~~

~~(1) No costs incurred shall be reimbursed if the entire cost incurred per mile of levee is one thousand dollars (\$1,000) or less.~~

~~(2) Fifty percent of any costs incurred in excess of one thousand dollars (\$1,000) per mile of levee shall be reimbursed.~~

~~(3) The maximum total reimbursement from the General Fund shall not exceed two million dollars (\$2,000,000) annually.~~

~~(b) This section shall become operative on January 1, 1999.~~

SEC. 19. Section 12987 of the Water Code is amended to read:

12987. (a) Local agencies maintaining *project or nonproject* levees shall be eligible for reimbursement pursuant to this part upon submission to and approval by the board of plans for the maintenance and improvement of the *project or nonproject* levees, including plans for the annual routine maintenance of the levees, in accordance with the criteria adopted by the board.

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(b) *The nonproject* plans shall also be compatible with the plan for improvement of the delta levees as set forth in Bulletin No. 192-82 of the department, dated December 1982, and as approved in Section 12225 ~~and~~. *The project levee plans shall also be compatible with Public Law 84-99, as amended.* Both *project and nonproject* plans shall include provisions to acquire easements ~~up to 400 feet in width from the crown along levees that allow for the control and reversal of subsidence~~ in areas where the department determines that such an easement is desirable to maintain structural stability of the levee. The easement ~~shall~~ *may* (1) restrict the use of the land to open-space uses ~~with minimum tillage of the soil, including, without limitation, nontillable crops such as pasture,~~ the propagation of wildlife habitat, and other compatible uses, (2) provide full access to the local agency for levee maintenance and improvement purposes, and (3) allow the owner to retain reasonable rights of ingress and egress as well as reasonable rights of access to the waterways for water supply and drainage.

The local agency cost of acquisition of the easements shall be reimbursable by the department from moneys appropriated pursuant to paragraph (1) of subdivision (b) of Section 12300, *or any other sources appropriated by the Legislature for purposes of this part.* ~~The~~

(c) The plans shall also include provision for protection of the fish and wildlife habitat determined to be necessary by the Department of Fish and Game and not injurious to the integrity of the levee. The Department of Fish and Game shall consider the value of the riparian and fisheries habitat and the need to provide safe levees in preparing its requirements. The Department of Fish and Game shall not approve any plan which calls for the use of channel islands or berms with significant riparian communities as borrow sites for levee repair material, unless fully mitigated, or any plans which will result in a net long-term loss of riparian, fisheries, or wildlife habitat.

(d) *After the memorandum of understanding required pursuant to Section 12307 is amended as required by Section 12317 to include methods for determining net long-term habitat improvement, the Department of Fish and Game shall require plans to be consistent with a net long-term improvement of aquatic and terrestrial habitat in the delta. The memorandum of understanding in effect prior to the amendments required by Section 12317 shall remain in effect with regard to levee projects and plans until the memorandum of understanding is amended.*

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(e) The plans shall also take into account the most recently updated Delta Master Recreation Plan prepared by the Resources Agency.

~~Upon--~~

(f) Upon approval of the plans by the board, the local agencies shall enter into an agreement with the board to perform the maintenance and improvement work, including the annual routine maintenance work, specified in the plans. If applications for state funding in any year exceed the state funds available, the board shall apportion the funds among those levees or levee segments that are identified by the department as most critical and beneficial, considering the needs of flood control, water quality, recreation, navigation, habitat improvements, and wildlife.

*SEC. 20. Section 12987.5 of the Water Code is amended to read:*

12987.5. (a) In an agreement entered into under Section 12987, the board may provide for an advance to the applicant in an amount not to exceed 75 percent of the estimated state share.

The agreement shall provide that no advance shall be made until the applicant has incurred costs averaging one thousand dollars (\$1,000) per mile of levee.

(b) Advances made under subdivision (a) shall be subtracted from amounts to be reimbursed after the work has been performed.

If the department finds that work has not been satisfactorily performed or where advances made actually exceed reimbursable costs, the local agency shall promptly remit to the state all amounts advanced in excess of reimbursable costs. If advances are sought, the board may require a bond to be posted to ensure the faithful performance of the work set forth in the agreement.

~~(c) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.~~

*SEC. 21. Section 12988 of the Water Code is amended to read:*

12988. Upon the completion in any year of the maintenance or improvement work, including annual routine maintenance work, as specified in the plans approved by the board, the local agency shall notify the department, and the department shall inspect the completed work. The department, upon completion of such inspection, shall submit to the board a report as to its findings. Upon a finding that the work has been satisfactorily completed in accordance with the approved plans, the board shall certify for reimbursement any costs incurred in excess of five hundred dollars (\$500) per mile of levee, if the entire cost incurred per mile of levee is not in excess of one thousand dollars (\$1,000), and shall certify for reimbursement 50-75 percent of any costs incurred per mile of levee if the entire cost incurred per mile of levee is greater than one thousand dollars (\$1,000).

*SEC. 22. Section 12989 of the Water Code is amended to read:*

12989. (a) The department shall conduct at least one annual inspection of every levee for which maintenance or improvement costs have been reimbursed pursuant to this part. In addition, the department shall inspect nonproject levees of local agencies for the purpose of monitoring and ascertaining the degree of compliance with, or progress toward meeting, the standards in the Flood Hazard Mitigation Plan, such as those set forth in Section 12984.

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*(b) The local agency shall cooperate with the department in the conduct of these inspections, including the provision of reasonable access over local agency lands and easements.*

*SEC. 23. Section 12994 is added to the Water Code, to read:*

*12994. (a) The Legislature finds and declares all of the following:*

*(1) The CALFED Bay-Delta Program has identified as a core action the need for emergency levee management planning for delta levees to improve system reliability.*

*(2) Even with active levee maintenance, the threat of delta levee failures from earthquake, flood, or poor levee foundation, will continue to exist.*

*(3) Because of this threat of failure, and the potential need to mobilize people and equipment in an emergency to protect delta levees and public benefits, the department needs authority that will enable it to act quickly.*

*(b) The department may do all of the following:*

*(1) In an emergency, as defined by Section 21060.3 of the Public Resources Code, that requires levee work to protect public benefits in the delta, the department may use funds pursuant to this part without prior approval of a plan by the board or the Department of Fish and Game.*

*(A) The amount of funds that may be expended each year on emergency levee work under this section shall not be greater than two hundred thousand dollars (\$200,000) and the amount that may be expended per emergency levee site shall not be greater than fifty thousand dollars (\$50,000). The local agency shall fund 25 percent of the total costs of the emergency repair at a site or shall fund an appropriate share of the costs as approved by the board and based upon information of the local agency's ability to pay for the repairs.*

*(B) Department contracts executed for emergency levee work under this section shall be exempted from Department of General Services approval required under the Public Contract Code.*

*(C) As soon as feasible after the emergency repair, the department shall submit a report to the board describing the levee work, costs incurred, and plans for future work at the site, including any necessary mitigation.*

*(D) This section is intended to supplement emergency services provided by the state or the United States. Nothing in this section overrides or supersedes the authority of the Director of the Office of Emergency Services under the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code) or the Natural Disaster Assistance Act (Chapter 7.5 (commencing with Section 8680) of Division 1 of Title 2 of the Government Code).*

*(2) Prepare and submit to the board for adoption a delta emergency response plan for levee failures. The plan is exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The plan may include recommendations of the multiagency response team established pursuant to paragraph (3) and may include, but not be limited to, the following:*

(A) Standardized contracts for emergency levee work to be executed by the department, local agencies, or other appropriate entities.

(B) Criteria for eligible emergency levee work.

(C) Definition of an emergency levee site.

(D) Documentation requirements.

(E) Methods for complying with the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) and the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code) in an emergency.

(F) Stages of emergency response that may occur in various situations.

(3) Establish a multiagency emergency response team, consisting of representatives from the department, the board, the Department of Fish and Game, the California Conservation Corps, the Office of Emergency Services, the Federal Emergency Management Agency, the United States Army Corps of Engineers, and the United States Fish and Wildlife Service to advise on methods to ensure that levee emergencies will be resolved as quickly and safely as possible.

SEC. 24. Section 12995 is added to the Water Code, to read:

12995. (a) The Legislature hereby finds and declares both of the following:

(1) There is an urgent need for rehabilitation and improvement of delta levees, and that the United States Army Corps of Engineers has a crucial and continuing role in that work.

(2) The department and the board have been cooperating with the United States Army Corps of Engineers in a feasibility study for rehabilitation and improvement of the levees in the delta. That feasibility study identified a federal interest in levee rehabilitation and improvements due to benefits to navigation, commerce, the environment, and flood damage reduction.

(b) The department and the board may cooperate with the United States Army Corps of Engineers to develop and implement delta levee rehabilitation, improvement, and realignment, and to enhance the environment.

SEC. 25. This act shall become operative only if Senate Bill 900 of the 1995-96 Regular Session is enacted and approved by the voters in the November 5, 1996, general election. ~~12997) is added to Division 6 of the Water Code, to read:~~

~~PART 10. DELTA LEVEE MAINTENANCE AND HABITAT RESTORATION~~

~~12997. As used in this part, the following terms have the following meanings:~~

~~(a) "Board" means the Reclamation Board.~~

~~(b) "Delta" means the Sacramento-San Joaquin Delta as described in Section 12220.~~

~~(c) "Local agency" means any city, county, district, or other political subdivision of the state that is authorized to maintain levees.~~

(Remainder is strikeouts)